IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/02/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION NO.2361 OF 2003
AND
CRL.M.P.Nos.884 & 885 OF 2003.

1.Thanickachalam
2.Mrs.Virthabai ... Petitioners

-Vs-

State, by
The Sub Inspector of Police,
Central Crime Branch Team-I,
Egmore, Chennai-8.
(Cr.No.987/2001) ... Respondent

Criminal Original petition filed under Section 482 of the Code of Criminal Procedure for the reliefs as stated therein.

For petitioners : Mr.L.Mohan

For respondent : Mr.O.Srinath,
Govt.Advocate (Crl.side)

For intervener : Mr.B.S.Gnanadesikan

:O R D E R
The above Criminal Original petition has been filed under Section 4 82 of the Code of Criminal Procedure praying to call for the records in C.C.No.8431 of 2002 on the file of the Court of XI Metropolitan Magistrate, Saidapet and quash the same.

2. The petitioners, who are the husband and wife and respectively aged 76 and 68 years, are the accused before the Court below in the said criminal case, which was registered on the complaint lodged by one Dr.A.G.Manimekalai for the offences punishable under Sections 406,40 5 and 383 r/w.384 IPC.

3. The allegations against the petitioners are that during the year 1988-89, the informant Dr.A.G.Manimekalai purchased a house property at Door No.28, Krishna Street, T.Nagar, Chennai-17 through the first

petitioner, who is a broker, and in order to settle the full amount for the purchased property, the first petitioner induced the informant to obtain a sum of Rs.3,50,000/= from him after obtaining the original title deed and a written letter from the informant in the name of his wife i.e. the second petitioner; that the first petitioner promised that whenever the informant settled the said amount at once, he would return the title deed as well as the letter of deposit given to his wife, the second petitioner, but, even after the final payment was effected on 6.3.1991 and in spite of the informant requesting the petitioners to return the original title deed and the letter of deposit, both the petitioners returned only the title deed but not the letter of deposit under a false pretext that it might have been lost and also threatened the informant and her father over phone and in person several times and also through some unknown persons in filthy language with intent to refuse and conceal the letter of deposit and to create certain forged documents and thus caused wrongful loss to the informant. The said complaint of the informant was investigated into by the respondent police and also filed a final report in C.C.No.8431 of 2002 before the Court of XI Metropolitan Magistrate, Saidapet, which is pending trial. At this stage, the petitioners/accused have come forward to file the above criminal original petition to quash the said criminal proceedings.

4. In the above petition, the petitioners would submit that the informant did not repay the amount borrowed by her and hence the second petitioner filed a suit in C.S.No.550/2001 on the file of this Court for recovery of a sum of Rs.11,58,000/= and evading summons in the said suit, as a counter-blast, the informant had lodged a false complaint with the respondent; that they filed a petition to quash the FIR in Crl.O.P.No.6357 of 2002, wherein a learned single Judge of this Court, while disposing of the said matter by order dated 13.11.2002 observed that `as per the allegations made in the FIR, a civil transaction took place in between the parties and considering the civil transaction, I do not think that the offence of criminal breach of trust has been made out. But, the only allegation found in the complaint for investigation is that 10 days prior to the complaint, the complainant was receiving threatening phone calls from the accused and some other persons interested on the accused, demanding an amount of Rs.11 lakhs and return of letter of deposit given in the name of the second accused, who is the wife of the first accused. To investigate as to whether there are actually any threats, the investigating agency has taken more than a year but even now, they could not decide whether any threat was actually administered by any of the accused'. The learned single Judge has further directed the investigating agency to complete the investigation within a month from the date of the said order.

5. Now, the grievance of the petitioners is that the offence under Section 406 IPC is punishable for a term which may extend to three years and the offence under Section 384 IPC is punishable for a term which may extend to two years; that the complaint was given on 21.12.20 01 and the alleged occurrence took place between 15.7.1989 and 6.3.19 91 and therefore a complaint on 21.12.2001 is beyond the period of limitation as set out under Section 468 Cr.P.C. and therefore the Court below could not have taken cognizance of the matter; that the complaint for non-return of letter of

deposit was stated for the first time after filing of the suit for recovery of the amount based on the letter of deposit and even then, the return of letter of deposit will not come within the purview of Section 405 IPC since the provision contemplates entrustment of a property moveable or immoveable dishonestly misappropriates or converts to his own use and therefore the complaint and other statements recorded under Section 161 Cr.P.C. do not make out a case under Section 406 IPC.; that the offence under Section 4 06 IPC is not made out also because there was no demand from the complainant and the question is open for adjudication in the civil suit.

6. The petitioners would further submit that in spite of the observation of this Court to the effect that `I do not think that the offence of criminal breach of trust has been made out' and the direction was to investigate only with reference to the threatening calls said to have been made by the first petitioner, the charge under Section 40 6 IPC is laid against them, in violation of the observation of this Court; that the allegation of threatening phone calls to the complainant and her father are vague in the sense that no date and time of receiving threatening calls were mentioned and they relate only to the first petitioner and excepting the self-serving statements of the complainant, her father, her husband and her employee, there is no other material for confirming the making of threatening calls and even if the said allegation about the threatening calls is true, it will not make out a case under Section 384 IPC since mere threat will not constitute an offence under Section 384 IPC. On such submissions, the petitioners would pray for the relief extracted supra.

7. Though no petition has been filed to implead the informant Dr.A.G.Manimekalai as the intervener in the above proceedings, Mr.B.S. Gnanadesikan appeared on her behalf and argued the matter, thereby making all efforts to substantiate the complaint lodged by the informant with the police and the final report filed, after investigation, by the respondent police.

8. During arguments, the learned counsel appearing on behalf of the petitioners would draw the attention of this Court to the orders passed by this Court earlier in Crl.O.P.No.6357 of 2002 wherein the learned single Judge of this Court is reported to have made the remarks, extracted in para No.4 supra, thereby making a differentiation treating one part appearing civil in nature and the other part criminal, further permitting the respondent to carry on with the investigation so far as that part which appears to be criminal is concerned and hence the respondent has done further investigation and it is now alleged that the very charge-sheet has been filed as on 12.12.2002 in the said case and it is only pending for trial.

9. At this juncture, the petitioners have come forward to file the above criminal original petition praying for the relief extracted supra which is nothing but the same as prayed for in the previous Crl.O.P.No.6357 of 2002. The only difference between the said criminal original petition and the present one is that in the earlier criminal original petition, since the case was at the FIR stage, the FIR was sought to be quashed and now, since the charge-sheet is filed offering the Calendar Case number, the calendar case is sought to be quashed. No mention need be necessary that some more progress has been made in the prosecution case in

filing the charge-sheet resulting in the trial Court taking the case on its file as a calendar case.

10. In these circumstances, the foremost question that arises for consideration and determination prior to entering into the facts and circumstances of the case as projected in the above criminal original petition is `whether the petitioners are entitled to file yet another criminal original petition on one and the same subject in spite of the same having already been decided by this Court and whether a second criminal original petition could be maintained under Section 482 of the Code of Criminal Procedure?'

11. If the exercise of the inherent powers conferred on the High Court is exhausted once, there cannot be a second exercise of the same power for one and the same subject, which has already been exercised and therefore neither the petitioner has the right to file repeated criminal original petitions in spite of the earlier criminal original petition filed by them having already been decided once and for all nor is it necessary on the part of this Court to exercise its inherent powers a second time having already passed an order in exercise of the said power conferred by law and therefore, the above criminal original petition filed by the petitioners become only liable to be dismissed as not maintainable and with heavy costs. However, in consideration of the petitioners age, this Court is not of the view to impose costs and hence the following order:

In result, the above criminal original petition fails and the same is dismissed as not maintainable.

Consequently, Crl.M.P.Nos.884 and 885 of 2003 are also dismissed.

Index: Yes
Internet: Yes
Rao
To
1.The Sub Inspector of Police,
Central Crime Branch Team-I,
Egmore, Chennai-8.

2.The XI Metropolitan Magistrate,
Saidapet,
Chennai-15.

3.The Public Prosecutor,
High Court, Madras.